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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/066,109

01/31/2002

Daniel D. McNeil

MPT-006

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08/23/2006

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EXAMINER

PARDO, THUY N

ART UNIT

PAPER NUMBER

2165

DATE MAILED: 08/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/066,109

Applicant(s)

MCNEIL, DANIEL D.

Examiner

Thuy N. Pardo

Art Unit

2165

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Art Unit: 2165

### DETAILED ACTION

1. In view of the Appeal Brief filed on April 11, 2005, PROSECUTION IS HEREBY REOPENED. New grounds of rejection set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

2. Claims 1-24 are presented for examination.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Myers et al. (Hereinafter "Myers") EP Application 0410630 A2 in view of Beavin et al. (Hereinafter "Beavin") US Patent No. 6,038,569.

As to claim 1, Myers teaches a method for backing up data in a computer system from at least one primary data source to a secondary data source [first recorded on the backup medium (log) is then written to its external storage address, page 3, lines 12-13; ab], comprising:

performing a full file backup in disk order on a plurality of data blocks stored by the at least one primary data source [full backup, pages 1-2; page 6, lines 3-4];

initiating an incremental backup at a predetermined interval [begin the backup cycle, page 5, lines 1-8], the incremental backup including file system metadata [see metadata on table on page 6, lines 45-57]; and

comparing a modification time of each file/folder at the predetermined interval to a defined time, wherein if the modification time is earlier than the defined time, then excluding data blocks of that file/folder from the incremental backup [the time since the last backup has elapsed of 7 days and instant date is earlier than defined date, then the file need not to be backup again, pages 6-7, particular lines 25-33; page 5, lines 1-30].

However, Myers does not explicitly teach that the full file backup is an image file although it has the same functionality of fully file backing up and recovery. Beavin teaches that the full file backup is an full image backup file [see the abstract; fig. 2-5; col. 3, lines 38 to col. 4, lines 58].

Therefore, it would have been obvious to one of ordinary skill in the Data Processing art at the time of the invention to add image backups of Beavin to the system of Myers as an essential means to facilitates recovery of loss or damages from full or incremental image copies.

Art Unit: 2165

As to claim 13, Myers and Beavin teach the invention substantially as claimed. Myers further teaches comparing a modification time of each file/folder at the predetermined interval to a defined time, wherein if the modification time is later than the defined time, then including data blocks of that file/folder in the incremental backup [pages 6-7, particular lines 1-9; page 5, lines 1-30].

As to claim 2, Myers and Beavin teach the invention substantially as claimed. Beavin further teaches that the defined time is a time when the full image backup was performed [timestamp of the corresponding page, col. 6, lines 18-23].

As to claim 3, Myers and Beavin teach the invention substantially as claimed. Myers further teaches that the defined time is a time when the last incremental backup was performed [date of last backup, page 3, lines 40-43].

As to claim 4, Myers and Beavin teach the invention substantially as claimed. Myers further teaches that the defined time is one of the first time when the full backup was performed and a second time when a last incremental backup was performed, whichever is the more recent [for object D: last backup date is 7/13/89 and last change date is 7/1/89. lines 45-57 on page 6].

As to claim 5, Myers and Beavin teach the invention substantially as claimed. Myers further teaches determining whether a system clock has been changed [page 5, lines 47 to page 6, lines 6].

As to claim 6, Myers and Beavin teach the invention substantially as claimed. Myers further teaches that if the system clock has been changed, then returning to performing the full image backup on the plurality of data blocks [page 2, lines 24-34].

As to claim 7, Myers and Beavin teach the invention substantially as claimed. Myers further teaches that if the system clock has not been changed, then initiating the incremental backup at the predetermined interval [page 7, lines 1-37].

As to claim 8, Myers and Beavin teach the invention substantially as claimed. Myers further teaches that if the system clock has not been changed, then comparing the modification time of each file/folder at the predetermined interval to the defined time [page 7, lines 1-37].

As to claim 9, Myers and Beavin teach the invention substantially as claimed. Beavin further teaches that the incremental backup includes file system metadata, thereby allowing the tracking of new, changed, renamed, and linked files/folders [col. 1, lines 37-67].

As to claim 10, Myers and Beavin teach the invention substantially as claimed. Beavin further teaches that the full backup and the incremental backup are used to provide a point-in-time disaster recovery [508, 510 of fig. 5].

As to claim 11, Myers and Beavin teach the invention substantially as claimed. Beavin further teaches that the full image backup and the incremental backup are used to keep a standby machine up-to-date as of a last backup [fig. 4; col. 5, lines 6 to col. 6, lines 40].

As to claim 12, Myers and Beavin teach the invention substantially as claimed. Beavin further teaches that the full image backup and the incremental backup are written directly over a network to a standby machine and recovered, thereby keeping the standby machine up-to-date as of a last backup [image copy data set, 110 of fig. 1; col. 4, lines 59 to col. 5, lines 15].

As to claims 14-24, all limitations of these claims have been addressed in the analysis of claims 1-13 above, and these claims are rejected on that basis.

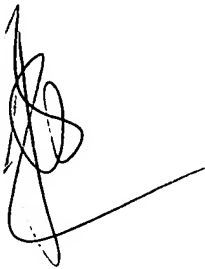
1. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thuy N. Pardo whose telephone number is 571-272-4082. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Gaffin can be reached on 571-272-4146. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2165

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

August 16, 2006

A handwritten signature in black ink, appearing to be 'Thuy N. Pardo', with a long horizontal line extending to the right.

**THUY N. PARDO**  
**PRIMARY EXAMINER**